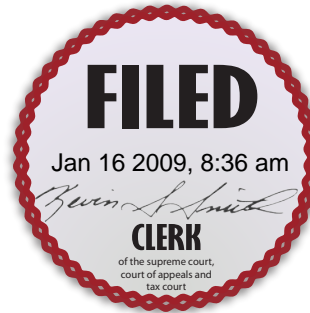


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL WILSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0806-CR-329
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0704-MR-057737

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**JANUARY 16, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Michael Wilson appeals his conviction by jury of murder. We affirm.

Wilson raises two issues for our review:

1. Whether the trial court erred in admitting his police statement into evidence;  
and
2. Whether there is sufficient evidence to support his conviction.

The facts most favorable to the verdict reveal that thirty-two-year-old Wilson and thirty-three-year-old Nupur Srivastava met at a drug and alcohol rehabilitation center in New York in November 2006. After Nupur was discharged from the center, she joined Wilson at his father's home in Indianapolis in January 2007, and later rented an apartment on the north side of town. In early April 2007, while Nupur was visiting her family in Maryland, her parents convinced her she needed to return to the rehabilitation center. Nupur briefly returned to Indianapolis to retrieve her belongings. The day before she was scheduled to leave Indianapolis, Nupur and Wilson were drinking whiskey and arguing on Wilson's father's patio when Wilson splashed Nupur with gasoline and set her on fire.

Nupur ran through Wilson's father's house to the bathroom where she filled up the bathtub and jumped into it to put out the flames. While she was in the bathtub, Wilson called 911 to report a fire. During the phone call, Nupur asked Wilson why he had done that. Wilson responded, "I didn't think it was going to be like that, I swear." State's Exhibit 2.

When paramedics arrived at the scene, Nupur walked unassisted out of the garage. Paramedic Jeff Brown ran to Nupur and escorted her to an ambulance. When Brown asked Nupur what had happened, she told the paramedic that Wilson had poured gas on her and set her on fire. Brown placed Nupur in the ambulance and turned to see a naked Wilson standing in the yard. Wilson had burns on his hands and portions of his forearms. Wilson told the paramedic that there had been an accident with the gas grill. On the way to the hospital, Nupur again told Brown as well as paramedic Shawn Grindstaff that she and Wilson were arguing when Wilson threw gasoline on her and lit her on fire. Wilson told another paramedic and a hospital nurse that the fire started when he and Nupur tried to light a grill using gasoline.

The following day, Indianapolis Police Department Sergeant John Breedlove went to the hospital to interview Wilson. Before the interview, Breedlove consulted with hospital staff who advised him that Wilson was taking Percocet for pain. Before questioning Wilson, Sergeant Breedlove read him his *Miranda* rights and had him sign a waiver of rights form. Wilson told the sergeant that he understood his rights, and the sergeant began to question him.

During the interview, Wilson asked to make a telephone phone call so that he could talk to someone because of the seriousness of the events. The sergeant told Wilson that he could stop answering questions at any time and allowed Wilson to make a telephone call. Wilson attempted to call his father, who he was unable to reach. After

making the phone call, Wilson told the sergeant that the person he wanted to speak to was his father but that he was unable to reach him.

Sergeant Breedlove readvised Wilson of his rights, and Wilson told the sergeant that he understood those rights and was willing to continue answering questions. During the interview, Wilson appeared coherent, understood the questions the sergeant asked him, never became confused, and thought about and provided answers to the questions. Although Wilson delayed answering some of the questions about how Nupur became doused with gasoline and set on fire, Sergeant Breedlove interpreted Wilson's responses to be deceitful rather than confused.

During the interview, Wilson admitted that his previous story about the grill accident was not true. Wilson explained that he told that story because he panicked. According to Wilson, he was holding a gas can while he and Nupur were arguing. Nupur pulled on the can and gas apparently splashed on her and ignited when one of them lit a cigarette. Wilson explained that when Nupur drank alcohol, "she always [got] very, very argumentative and want[ed] to put [Wilson] down and want[ed] to say things to push buttons." Transcript of Wilson's Statement at 8. The State subsequently charged Wilson with attempted murder and aggravated battery.

Nupur, who had third degree burns on 80% of her body, was placed in a drug-induced coma to allow for treatment and pain management. After she died from multi-organ failure resulting from her burns five weeks later, Wilson was charged with murder.

At trial, additional evidence revealed that in March 2007, while Nupur was staying at a hotel in Indianapolis, she and Wilson got into a physical altercation. Jimmy Barona, the hotel's owner, testified that Nupur's hair was messed up, and she had a black eye and scratches on her face. When Nupur and Barona told Wilson to leave Nupur's hotel room, Wilson pushed Nupur and appeared ready to fight Barona. Barona and a hotel maintenance worker had to physically remove Wilson from the room.

In addition, a former neighbor testified that Wilson and Nupur argued every day. According to the neighbor, one night Wilson banged on Nupur's apartment door for hours demanding to be let into the apartment. The following morning, the neighbor noticed plaster from the ceiling and the walls had been knocked to the floor by Wilson's banging.

Also at trial, ATF Fire Research Engineer Brian Grove testified that he conducted nine tests where gas was splashed on a manikin wearing jeans and a sweater similar to those that Nupur was wearing. The tests revealed that Nupur was seated when she was doused with approximately one-half cup of gasoline below her waistband and above her knees. The gasoline was then ignited with a flame, not a cigarette, which had to have been placed one to two inches from the gasoline. Two lighters were found on the patio where Nupur was sitting. One of the lighters was found on a table, and the other was found on the ground.

Wilson testified that at the time he gave his statement to Sergeant Breedlove, Wilson was "pretty doped up," and easily confused. Tr. at 454. He also testified that

Nupur set herself on fire and asked him not to tell anyone what she had done. A jury convicted Wilson of murder, and he appeals.

Wilson first argues that the trial court erred in admitting into evidence his police statement to Sergeant Breedlove. The admission of evidence is within the sound discretion of the trial court, and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of the trial court's discretion resulting in the denial of a fair trial. *Prewitt v. State*, 761 N.E.2d 862, 869 (Ind. Ct. App. 2002). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In determining the admissibility of evidence, we will only consider the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Id.*

Wilson contends that the trial court erred in admitting his statement to Sergeant Breedlove into evidence because the statement was not voluntary and it was admitted in violation of his right to counsel. We address each of his contentions in turn.

Wilson first argues that his statement was not voluntary because he was undergoing painful burn treatments and receiving pain medication at the time he gave it. The voluntariness of a statement is determined in light of the totality of the circumstances surrounding the interrogation. *Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004). Relevant factors include the length, location, and continuity of the interrogation, and the maturity, education, physical condition, and mental health of the defendant. *Id.* To determine that a statement was given voluntarily, the court must conclude that

inducement, threats, violence, or other improper influences did not overcome the defendant's free will. *Id.* The critical inquiry is whether the defendant's statements were induced by violence, threats, promises or other improper influences. *Martin v. State*, 779 N.E.2d 1235, 1241 (Ind. Ct. App. 2002). On appeal, the trial court's determination is reviewed the same as other sufficiency matters. *Clark*, 808 N.E.2d at 1191.

Here, our review of the evidence reveals that Sergeant Breedlove consulted with hospital staff prior to questioning Wilson. Before interviewing Wilson, Sergeant Breedlove advised Wilson of his rights and had him sign a waiver of rights form. Wilson told the Sergeant that he understood his rights. During the interview, Wilson, a college graduate, appeared coherent, understood the questions the sergeant asked him, never became confused, and thought about and provided answers to the questions. Although Wilson delayed answering some of the questions about how Nupur became doused with gasoline and set on fire, Sergeant Breedlove interpreted Wilson's responses to be deceitful rather than confused.

In addition, Wilson was not subjected to a lengthy interrogation, as the total elapsed time of the statement between the advisement and waiver of rights and the end of the statement, including time for Wilson's telephone call to his father, was less than one hour. Further, Wilson makes no allegations of physical abuse or other coercive or deceptive action by the police. This evidence is sufficient to establish that Wilson's statement was voluntary. *See Martin*, 779 N.E.2d at 1235.

Wilson also contends that the trial court erroneously admitted the statement into evidence in violation of his right to counsel. Specifically, Wilson claims that Sergeant Breedlove ignored Wilson's "invocation of [his] right to counsel." Appellant's Br. at 5. If an accused invokes the right to counsel, the police must cease questioning until an attorney has been made available or until the accused initiates further conversation with the police. *Collins v. State*, 873 N.E.2d 149, 155 (Ind. Ct. App. 2007). We determine whether an accused has asserted his right to counsel under an objective standard. *Id.* Invocation of this right requires some statement that can be reasonably construed as an expression of a desire for the assistance of an attorney. *Id.* The level of clarity required to meet the reasonableness standard is sufficient clarity such that a "reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Id.*

Police have no duty to cease questioning when an equivocal request for counsel is made. *Taylor v. State*, 689 N.E.2d 699, 703 (Ind. 1997). Nor are they required to ask clarifying questions to determine whether the suspect actually wants a lawyer. *Id.* For example, in *Taylor*, the Indiana Supreme court found Taylor's statement of "I guess I really want a lawyer, but, I mean, I've never done this before so I don't know" was an expression of doubt, not a request. *Id.* The Court concluded that a reasonable police officer in the circumstances would not understand that Taylor was asserting his right to have counsel present. *Id.*



Here, Wilson asked to make a telephone call because he wanted to talk to someone because of the seriousness of the events. Wilson attempted to telephone his father, who he was unable to reach. After making the telephone call, Wilson told the sergeant that the person he wanted to speak to was his father. Wilson never mentioned a lawyer. Here, as in *Taylor*, a reasonable police officer in the circumstances would not understand that Wilson was invoking his right to counsel. Further, Sergeant Breedlove was not required to ask questions to determine whether Wilson actually wanted a lawyer. *See id.* The trial court did not err in admitting the statement into evidence.

Wilson also argues that there was insufficient evidence to support his conviction. His sole contention is that the State failed to prove that he lit Nupur on fire. Our standard of review for sufficiency of the evidence is well settled. We will not reweigh the evidence or judge the credibility of the witnesses, and we will respect the jury's exclusive province to weigh conflicting evidence. *Cline v. State*, 860 N.E.2d 647, 648 (Ind. Ct. App. 2007). Considering only the evidence and the reasonable inferences supporting the verdict, our task is to decide whether there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* at 649.

Here, our review of the evidence reveals that Nupur and Wilson had a history of domestic violence. In fact, Wilson admitted to Sergeant Breedlove that when Nupur drank alcohol, Nupur "pushed his buttons." In early April 2007, while Nupur and Wilson were drinking alcohol together on the patio of his Wilson's father's house, Nupur was

seated when Wilson threw one-half cup of gasoline on Nupur's lap and ignited it with a flame placed one to two inches from the gasoline. While Wilson was making a 911 call to report a fire, Nupur asked him why he "had done that," and Wilson responded that he had not expected it "to be like that." When the paramedics arrived, Nupur told two of them that Wilson had thrown gas on her and set her on fire. This evidence is sufficient to prove that Wilson lit Nupur on fire and to therefore support Wilson's conviction of murder.

Affirmed.

KIRSCH, J., and BARNES, J., concur.